



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Moore *et al.*

Appl. No.: 09/631,638

Filed: August 2, 2000

For: Process for the Recovery of Organic
Acids

Confirmation No.: 8662

Art Unit: 1651

Examiner: Naff, D.M.

Atty Docket: 1533.0980001/SRL/KPQ

Declaration of Kevin M. Moore Under 37 C.F.R. §1.132

Commissioner for Patents
Washington, D.C. 20231

Sir:

I, Kevin M. Moore, hereby declare and state as follows:

1. I am a co-inventor of the captioned application.
2. I have read and understand Dumpelmann *et al.* (U.S. Patent No. 5,852,211) and an English language translation of Bott *et al.* (European Patent No. 0 174 624).
3. The Examiner states in the Office Action of May 20, 2003,

It is granted as asserted by applicants that Bott *et al* filter the broth before drying. However, to omit filtering merely to simplify would have been clearly obvious. No result has been established from not filtering other than to simplify, and to remove a step merely to simplify is obvious (page 4, lines 19-24).

4. Bott teaches away from not filtering, as it specifies that the calcium salt that is formed must be "water soluble". As broths contain water insoluble biomass, Bott teaches that the Bott process would not work in the presence of biomass. The Bott process gives rise to a two phase liquid system, which must be separated. The presence of biomass would create a third, solid phase. It is also possible that the solids addition could prevent the separation entirely, by forming an emulsion.
5. Dumpelmann teaches a process that involves crystallizing sodium 2-keto-L-gulonate monohydrate from the fermentation solution. Dumpelmann does not teach the drying of the fermentation broth without prior removal of insolubles from the fermentation broth.
6. Thus, one reading Dumpelmann and Bott would have no reasonable expectation of success of producing the desired organic acid by drying the fermentation broth containing biomass.
7. Further, I am not aware of any reference published prior to the first filing of the present application teaching not filtering the fermentation broth in the production of organic acids.

8. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the present patent application or any patent issued thereon.

Date: August 18, 2003Signature: Kevin M. Moore
Kevin M. Moore